

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE HOLMES,

Defendant.

Case No.: 2:21-cr-00225-GMN-NJK
REPORT AND RECOMMENDATION
[Docket No. 46]

This matter was referred to the undersigned Magistrate Judge on Defendant's motion to suppress evidence. Docket No. 46. The Court has considered Defendant's motion, the United States' response, Defendant's reply, and the evidence and arguments presented at an evidentiary hearing held before the Court. Docket Nos. 46, 47, 50, 53.

I. BACKGROUND

A. Testimony of Officer Norberto Moreno-Marquez.¹

On March 9, 2021, Las Vegas Metropolitan Police Department ("LVMPD") Officer Norberto Moreno-Marquez was on duty with Officer Ryan Michaels. Officers Moreno-Marquez and Michaels were both in uniform and patrolling in a marked vehicle. Docket No. 57 at 8-9. At approximately 1:56 p.m., the officers were dispatched to a possible auto burglary incident on Stewart Avenue between N. 21st Street and N. 23rd Street in Las Vegas, Nevada. *Id.* at 9-11; Government Exh. 1 at 1. Dispatch also assigned one other LVMPD vehicle with two officers to

¹ Although Detective Moreno-Marquez is now a detective, he was an officer at the time of the events at issue here. Docket No. 57 at 7-8. Accordingly, the Court refers to him as "Officer," rather than "Detective."

1 respond to the incident. Docket No. 78 at 11-12. Dispatch indicated that the suspects were Black
2 male adults but provided the officers no other physical descriptors. *Id.* at 35-36.

3 Officer Moreno-Marquez and Officer Michaels immediately drove to the scene and
4 approached the address, driving down Stewart Avenue towards N. 23rd Street. Docket No. 57 at
5 16. *See also* Government Exhs. 6, 6A. Officer Moreno-Marquez knew that the area was a high
6 crime area where criminal street gangs operated. Docket No. 57 at 14. As a result, he was looking
7 around the area as the officers approached, in case there were fleeing subjects. *Id.* at 15. As the
8 officers' vehicle approached the scene, Officer Moreno-Marquez observed Defendant, a Black
9 male adult, running toward Stewart Avenue through an alleyway between two apartments into a
10 fenced area. *Id.* at 16; *see also* Government Exhs. 6A, 7A. Officer Moreno-Marquez saw
11 Defendant running at full speed toward Stewart Avenue until he noticed the two officers, at which
12 point he came to a "complete walking stop." Docket No. 57 at 34. Officer Moreno-Marquez was
13 suspicious that Defendant was the only individual in the area running and that he suddenly changed
14 his gait when he saw the officers. *Id.* at 34. At that time, Officer Moreno-Marquez was unaware
15 if the other LVMPD officers had arrived at the scene yet. *Id.* at 15. He believed Defendant was
16 running away from the scene to which he and the other officers were responding. *Id.* at 19.

17 Officer Moreno-Marquez told Officer Michaels to stop the vehicle and both officers got
18 out of the car. *Id.*² Officer Michaels drew his weapon and gave verbal commands to Defendant.
19 *Id.* at 19, 38-39. Officer Moreno-Marquez jumped over the fence surrounding the building and
20 apprehended Defendant near the fence, verbally commanding him to lay on the ground. Docket
21 No. 57 at 18-19, 38-39. *See also* Government Exhs. 7, 7A. After Officer Moreno-Marquez
22 apprehended Defendant, he and Officer Michaels conducted a weapons frisk of him, and found no
23 weapons on his body. Docket No. 57 at 34. Officer Moreno-Marquez then went to meet with
24 LVMPD Officers Kevin Rivera and Timothy Morey, who had approached the scene from another

25
26 ² Body camera footage depicts this interaction, from the initial stop of the LVMPD vehicle
27 to the apprehension and weapons frisk of Defendant. *See* Government Exh. 2 at 7:10-8:04. Officer
28 Moreno-Marquez's testimony closely aligns with what the body camera footage represents, such
that the Court finds that separate discussion of this segment of the body camera footage is
unnecessary.

1 direction before Officers Moreno-Marquez and Michaels had arrived. *Id.* at 23, 39. Officer
2 Moreno-Marquez also walked around the scene to check whether any additional subjects had
3 hidden or fled as officers approached the scene. *Id.* at 23. Officer Moreno-Marquez had previous
4 experience with one of the apartments in the area and, as a result, believed that an initial safety
5 check was necessary to make sure no other suspect was hiding. *Id.* At this time, Officer Michaels
6 took Defendant back down the alley to where the other officers were located, as well as the two
7 additional subjects that Officers Rivera and Morey had detained. *Id.*

8 Officer Moreno-Marquez had a brief conversation with Defendant after bringing him to
9 the other LVMPD vehicle. *Id.* Defendant told Officer Moreno-Marquez that he was not a resident
10 of the area and that he was “on paper,” meaning he was either on parole or probation. *Id.* at 23-
11 24. After learning this information, Officer Michaels and Officer Moreno-Marquez investigated
12 whether Defendant was on supervision. *Id.* at 25. Officer Michaels radioed the LVMPD warrants
13 channel. *Id.* at 26. Based on the information provided to Officer Michaels, Officer Moreno-
14 Marquez arrested Defendant for violation of his parole. *Id.*

15 After Officer Moreno-Marquez arrested Defendant and the scene was secured, he
16 rewalked the alleyway where he had observed Defendant fleeing, which is his practice. *Id.* at 27.
17 He takes this action to locate both abandoned contraband and any other items of evidence that can
18 help identify the suspect, and does so for community safety, regardless of whether the fleeing
19 subject is successfully apprehended by the officers. *Id.*

20 While walking down the alleyway, Officer Moreno-Marquez observed a firearm on the
21 ground among flowers and dirt. *Id.* at 27-28, 32-33. *See also* Government Exhs. 2A at 6:53-6:59,
22 4, 5. The firearm was a tan Glock 19x model with an extended magazine. Defense Exh. A at 3.
23 Officer Moreno-Marquez believed that the weapon appeared to be “fairly new” and “very clean”
24 which, given the location in which it was observed, indicated that it had been recently abandoned
25 or discarded. Docket No. 57 at 29-30. Once Officer Moreno-Marquez observed the firearm, he
26 froze the premise and requested both a crime scene analyst and a detective from the Downtown
27 Area Command to safely recover the firearm. *Id.* at 30, 32-33. *See also* Government Exh. 2A at
28 7:01-15-20.

1 After radioing for additional law enforcement assistance and entering the information about
 2 the firearm into his vehicle's system, Officer Moreno-Marquez returned to Defendant and read
 3 him *Miranda* warnings. Docket No. 57 at 30; Government Exh. 2A at 15:46-16:13. Officer
 4 Moreno-Marquez then asked Defendant questions about his criminal history, told Defendant that
 5 a firearm had been located, and asked him whether the firearm was his. Docket No. 57 at 30, 33;
 6 Government Exh. 2A at 16:30-17:09.

7 Defendant vehemently denied ownership of the firearm seven times. Docket No. 57 at 30,
 8 33; Government Exh. 2A at 17:08 – 18:10.³ Defendant was arrested at the scene for violation of
 9 parole. Docket No. 57 at 26.

10 **B. Testimony of Officer Timothy Morey**

11 On March 9, 2021, Officer Timothy Morey was on duty as a LVMPD officer. Docket No.
 12 57 at 44-45. At around 2:00 p.m. that day, he was called out to Stewart Avenue near 23rd Street
 13 to respond to a possible auto burglary in the north alley of the address provided during the 911
 14 call. *Id.* at 45-46. The call was high priority because the incident was ongoing. *Id.* at 46. Officer
 15 Morey was in uniform and a marked patrol vehicle alongside LVMPD Officer Rivera. *Id.*

16 While the officers were on their way to the scene of the incident, Dispatch told them that
 17 there was “a group of Black male adults, checking door handles” of vehicles in a north alley of the
 18 property. *Id.* at 46-47. Dispatch further stated that the person reporting had a previous incident
 19 with these Black male adults that were in the alley and that, during that previous incident, rocks
 20 were thrown at the person reporting. *Id.* at 47. Officer Morey was not provided descriptions of
 21 the males' clothing or heights. *Id.* at 59. He was told that they were slim Black male adults. *Id.*

22 Officer Morey approached the north alley from N. 23rd Street and made an eastbound turn
 23 into the alley, approaching the target location. *Id.* at 47. Officer Morey observed two Black males
 24 when he arrived in the alley in a location consistent with where the 911 caller indicated he had

25 ³ Officer Moreno-Marquez's body camera footage from the incident includes both video
 26 and audio of this interaction. Government Exh. 2B at 17:08-18:10. Defendant unequivocally stated
 27 that he was not the owner of the firearm and that he was “100% sure” and “positive” that his DNA
 28 would not be located on it. *Id.* (Defendant's exact responses to the questions were: “hell no,”
 “no,” “100% sure,” “that's not my firearm,” “I'm positive,” “it is not my firearm, sir,” and “swab
 me, whatever, right now.”).

1 observed the group. *Id.* at 47-48. One of the males was wearing a red shirt and the other male
2 was wearing a black hooded sweater. *Id.* at 48; *see also* Government Exh. 3. Upon arriving at the
3 scene, the officers stepped out of the car to make contact with the two Black males. Docket No.
4 57 at 48. They did not draw their on-duty weapons at any point during their investigation of this
5 incident. *Id.* at 63. Officer Morey asked the two males to step to the front of his patrol vehicle.
6 *Id.* at 48-49. He interacted with the male in the red shirt while Officer Rivera interacted with the
7 male in the black sweater. *Id.* at 49.

8 At the time of this initial interaction, Officer Morey was not aware of a third individual
9 who might have been involved in the incident. *Id.* at 49. While the officers were talking with the
10 two males in the alley, Officer Morey heard loud yelling to the south toward Stewart Avenue,
11 which sounded like verbal commends that LVMPD officers would issue. *Id.* He later became
12 aware that a third individual was involved in the incident when Officers Moreno-Marquez and
13 Michaels brought Defendant to the front of his patrol car. *Id.*

14 Officer Morey later reviewed his body camera footage from his approach to the scene and,
15 although he did not remember seeing a third individual while the vehicle entered the alley, his
16 camera footage depicts a Black male wearing white clothing standing next to the two individuals
17 with whom he and Officer Rivera interacted. *Id.* at 50-55. This individual was no longer present
18 on the scene when Officer Morey exited his vehicle, but the images from his body cam footage
19 match Defendant. *Id.* Officer Morey never issued any commands to Defendant and never spoke
20 to him. *Id.* at 55-56.

21 The person who called 911 to report the auto burglary was on the scene when Officer
22 Morey arrived and spoke with him. *Id.* at 56-57. This individual provided his name and contact
23 information, which is contained in the CAD. *Id.*; *see also* Government Exh. 1 at 1. Officer Morey
24 reviewed the video that the 911 caller had watched while making his call to the police and made a
25 determination that there was no evidence of an auto burglary. *Id.* at 59. Officers could not
26 determine whether an auto burglary was in progress before arriving at the scene of the incident
27 and securing the scene. *Id.* at 59-61. After it was determined that no auto burglary was in progress,
28

1 Officer Morey and Officer Rivera took information from the individuals in the red shirt and the
2 black sweater and released them. *Id.* at 62.

3 **II. ANALYSIS**

4 **A. Credibility of Witnesses**

5 The Court ordered an evidentiary hearing in order to make an accurate determination of
6 what occurred in the instant case and how the facts relate to the applicable caselaw. “The
7 longstanding and repeated invocations in caselaw of the need of district courts to hear live
8 testimony so as to further the accuracy and integrity of the factfinding process are not mere
9 platitudes. Rather, live testimony is the bedrock of the search for truth in our judicial system.”
10 *United States v. Thoms*, 684 F.3d 893, 903 (9th Cir. 2012). “[J]udges simply cannot decide
11 whether a witness is telling the truth on the basis of a paper record and must observe the witnesses’
12 demeanor to best ascertain their veracity - or lack thereof.” *Oshodi v. Holder*, 729 F.3d 883, 892
13 (9th Cir. 2013) (internal citation omitted). *See also United States v. Howell*, 231 F.3d 615, 621
14 (9th Cir. 2000) (evidentiary hearing required where defendant demonstrates that a significant
15 disputed factual issue exists); *United States v. Mejia*, 69 F.3d 309, 315 (9th Cir. 1995) (“There can
16 be no doubt that seeing a witness testify live assists the finder of fact in evaluating the witness’s
17 credibility”).

18 During the evidentiary hearing in this matter, the Court had the opportunity to listen to the
19 testimony of all witnesses, to observe and evaluate each witness’ demeanor while testifying, and
20 to weigh each witness’ credibility. Having done so, the Court finds that both witnesses testified
21 credibly.

22 **B. Motion to Suppress**

23 Defendant asks the Court to suppress the firearm recovered on March 9, 2021. Docket No.
24 46. Defendant submits that, on the date of his arrest, the officers pursuing him had no reasonable
25 suspicion to stop and seize him at gunpoint, because the 911 call did not give particularized
26 descriptions of the men who were observed through a video call, the informant who made the call
27 was unreliable, the 911 call did not report an emergency, and Defendant’s presence in the area in
28 running clothing was not sufficient to establish reasonable suspicion. *Id.* at 2-7. Defendant

1 submits that, although he fled from the officers, flight does not *per se* establish reasonable
2 suspicion. *Id.* at 6-7. Because no reasonable suspicion exists, Defendant submits that his stop and
3 seizure by the LVMPD officers violated the Fourth Amendment. *Id.* Defendant further submits
4 that the officers would not have searched his travel path and located the firearm but for his
5 unconstitutional stop and seizure. *Id.* at 7. Defendant therefore asks the Court to suppress the
6 firearm as fruit of the poisonous tree that stemmed from the Fourth Amendment violations he
7 endured. *Id.*

8 In response, the United States asks the Court to deny Defendant's motion. Docket No. 47.
9 The United States submits that Defendant has no standing to seek suppression of the firearm since
10 he willfully abandoned it before the officers stopped and seized him by discarding the firearm
11 under a flower bush in a stranger's yard and running away from it. *Id.* at 4-7. Since the firearm
12 was abandoned, the United States submits, Defendant had no reasonable expectation of privacy in
13 it, and thus no standing to seek its suppression. *Id.* at 7. The United States further submits that
14 the officers had reasonable suspicion to detain Defendant, as they were responding to a 911 call
15 detailing an in-progress burglary of a car, the informant was reliable, the information he provided
16 gave physical descriptions of the individuals present at the scene and the number of people that
17 was consistent with the group of individuals observed at the scene, and Defendant immediately
18 fled without provocation when police arrived at the scene. *Id.* at 8-10. Since the stop was
19 reasonable under the circumstances, the United States submits, it did not violate Defendant's
20 Fourth Amendment rights. *Id.* Finally, the United States submits that the firearm was not a fruit
21 of the seizure as it was abandoned before the officers ever had contact with Defendant. *Id.* at 10-
22 12.

23 In reply, Defendant submits that he has standing to seek the suppression of the firearm
24 because he was illegally seized before it was located by law enforcement and there is no attenuation
25 between his wrongful detention and the discovery of the firearm. Docket No. 50 at 2-4. Defendant
26 further submits that the officers had no reasonable suspicion to draw weapons on him while
27 effectuating their stop. *Id.* at 5.

28

1 **1. Fourth Amendment Standards**

2 The Fourth Amendment protects “the right of the people to be secure in their persons,
3 houses, papers, and effects against unreasonable searches and seizures.” U.S. Const. amend. IV.
4 The Fourth Amendment protects “people, not places” and their legitimate and reasonable
5 expectations of privacy. *Katz v. United States*, 389 U.S. 347, 350-51 (1967). Reasonableness is
6 the touchstone of the Fourth Amendment. *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). If
7 evidence is obtained in violation of the Fourth Amendment, that evidence and evidence derived
8 from it can be suppressed as the “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S.
9 471, 484-87 (1963). *See also United States v. Lundin*, 817 F.3d 1151, 1157 (9th Cir. 2016); *United*
10 *States v. McClendon*, 713 F.3d 1211, 1215 (9th Cir. 2013).

11 **2. Standing**

12 To have Fourth Amendment “standing” to “contest the legality of a search or seizure, the
13 defendant must establish that he had a ‘legitimate expectation of privacy’ in the place searched or
14 in the property seized.” *United States v. Kovac*, 795 F.2d 1509, 1510 (9th Cir. 1986) (emphasis
15 added) (citation omitted). Defendant has the burden of establishing standing, not the United States.
16 *United States v. Singleton*, 987 F.2d 1444, 1449 (9th Cir. 1993) (defendant's burden of proof as
17 established by the Supreme Court); *United States v. Hull*, 2022 WL 2921000, at *2 (E.D. Wash.
18 July 25, 2022).

19 It is well settled that a “defendant who abandons property has no standing to contest its
20 search and seizure.” *United States v. Stephens*, 206 F.3d 914, 917 (9th Cir. 2000). *See also United*
21 *States v. Gilman*, 684 F.2d 616, 619 (9th Cir. 1982) (“[i]f a person has voluntarily abandoned
22 property, he has no standing to complain of its search or seizure”). Whether a defendant abandons
23 property is a question of fact; a court must examine the totality of circumstances, including whether
24 the defendant denied ownership of the property. *United States v. Gonzalez*, 979 F.2d 711, 714 (9th
25 Cir. 1992). Abandonment is determined “by measuring the intent of a party in objective terms.”
26 *Gilman*, 684 F.3d at 619. It may “be inferred from words, acts and other objective facts ... (that)
27 the person ... relinquished ... a reasonable expectation of privacy in his property.” *United States v.*
28

1 *Jackson*, 544 F.2d 407, 409 (9th Cir. 1976); *United States v. Sledge*, 650 F.2d 1075, 1077 (9th Cir.
2 1981).

3 Here, the facts clearly establish that Defendant abandoned the firearm before he came into
4 contact with any police officers. Defendant was standing next to two other males when Officers
5 Morey and Rivera arrived on the scene but fled before the officers even noticed him. As he ran,
6 Defendant discarded his firearm. After Defendant discarded the firearm, he was stopped by
7 Officers Moreno-Marquez and Michaels. When Officer Moreno-Marquez questioned Defendant
8 about the firearm, Defendant unequivocally denied its ownership numerous times. Under the
9 totality of the circumstances, the Court finds that Defendant abandoned the firearm and, therefore,
10 he does not have standing to contest its search and seizure.

11 Even if Defendant did have standing, however, the Court finds that suppression is not
12 warranted.

13 **3. Seizure**

14 The Fourth Amendment permits “brief investigative stops . . . when a law enforcement
15 officer has a particularized and objective basis for suspecting the particular person stopped of
16 criminal activity.” *Navarette v. California*, 572 U.S. 393, 396-97 (2014) (citations and quotations
17 omitted). *See also Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). Such investigative stops are
18 considered seizures. *Id.* A seizure occurs when a person, “by means of physical force or a show
19 of authority,” has his freedom restrained. *United States v. Smith*, 633 F.3d 889, 892-93 (9th Cir.
20 2013) (quoting *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)). An application of physical
21 force by law enforcement is always sufficient to effectuate a seizure, but an officer’s show of
22 authority only effectuates a seizure when the person to whom it is directed actually submits to the
23 authority. *California v. Hodari D.*, 499 U.S. 621, 626 (1991). To conduct a brief investigative
24 stop in accordance with the Fourth Amendment, the stop must be based on reasonable suspicion
25 of criminal activity. *Navarette*, 572 U.S. 369-97.

26 Reasonable suspicion exists when “‘specific, articulable facts’ which together with
27 ‘objective and reasonable’ inferences, form a basis for suspecting that a particular person is
28 engaged in criminal conduct.” *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000)

1 (quoting *United States v. Hernandez-Alvarado*, 891 F.2d 1414, 1416 (9th Cir. 1989)). *See also*
2 *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000). The “quantum of proof
3 needed for reasonable suspicion is less than a preponderance of evidence, and less than probable
4 cause.” *United States v. Tiong*, 224 F.3d 1126, 1140 (9th Cir. 2002) (internal quotations omitted).

5 Reasonable suspicion “is dependent upon both the content of the information possessed by
6 the police and its degree of reliability.” *United States v. Edwards*, 761 F.3d 977, 983 (9th Cir.
7 2014) (internal citation omitted); *see also Navarette*, 572 U.S. at 397 (citing *Alabama v. White*,
8 496 U.S. 325, 330 (1990)). Reasonable suspicion can depend on an officer’s personal experience
9 and special training to make inferences and deductions, as long as the conclusions are reasonable.
10 *Montero-Camargo*, 208 F.3d at 1131 (internal citations omitted). Reasonable suspicion cannot be
11 based on “broad profiles,” “a prefabricated or recycled profile of suspicious behavior,” or
12 “overbroad generalizations.” *United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1121, 1124,
13 1126 (9th Cir. 2002) (internal citations omitted). A suspect’s unprovoked flight from law
14 enforcement does not *per se* establish reasonable suspicion, but it is considered suggestive of
15 wrongdoing and can contribute to a determination that reasonable suspicion exists. *Illinois v.*
16 *Wardlow*, 528 U.S. 119, 124-25 (2000). Moreover, officers can consider “the relevant
17 characteristics of a location in determining whether the situation is sufficiently suspicious to
18 warrant further investigation.” *Id.* at 124.

19 Determining reasonable suspicion requires considering the totality of the circumstances,
20 and “all relevant factors must be considered in the reasonable suspicion calculus – even those
21 factors that, in a different context, might be entirely innocuous.” *United States v. Fernandez-*
22 *Castillo*, 324 F.3d 1114, 1117 (9th Cir. 2003) (quoting *United States v. Arvizu*, 534 U.S. 266, 277-
23 78 (2002)). When considering the totality of the circumstances, courts must remember that
24 reasonable suspicion is a “commonsense, nontechnical conception[] that deal[s] with ‘the factual
25 and practical considerations of everyday life on which reasonable and prudent men, not legal
26 technicians, act.’” *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (quoting *Illinois v. Gates*,
27 462 U.S. 213, 231 (1983)).

1 Facts and circumstances contributing to reasonable suspicion to conduct a brief
2 investigatory stop can be based on information provided to law enforcement by informants. *Adams*
3 *v. Williams*, 407 U.S. 143, 146-48 (1972); *see also United States v. Palos-Marquez*, 591 F.3d 1272,
4 1275 (9th Cir. 2010). Law enforcement can rely on an informant's tips to justify investigatory
5 stops if the tips have indicia of reliability. *Palos-Marquez*, 591 F.3d at 1275. Knowledge of the
6 identity of the informant can add to the reliability of the informant. *Florida v. J.L.*, 529 U.S. 266,
7 270 (2000) (citing *Adams*, 407 U.S. 146-47) and *White*, 496 U.S. at 329). An informant's
8 information is generally considered more reliable if the information reported is being or was
9 observed firsthand. *See Navarette*, 572 U.S. at 399 (citing *Gates*, 426 U.S. at 234).

10 Here, the Court finds that Defendant was seized by Officers Moreno-Marquez and
11 Michaels when he submitted to their verbal commands to stop and lie on the ground and was
12 handcuffed by Officer Moreno-Marquez. Defendant had fled from the location that Officers
13 Morey and Rivera were approaching in their vehicle. He did not interact with law enforcement
14 personally until Officer Michaels drew his gun and issued verbal commands while Officer
15 Moreno-Marquez jumped the fence and approached him. Defendant, upon seeing Officers
16 Moreno-Marquez and Michaels, immediately responded to the verbal commands and lay down on
17 the ground. He was then handcuffed by Officer Moreno-Marquez and a weapons frisk was
18 conducted.⁴

19 The Court further finds that, considering the totality of the circumstances, reasonable
20 suspicion supported the investigative stop. Officers Moreno-Marquez and Michaels were
21 responding to the location in question based on information provided by an informant that a
22 potential auto burglary was in progress in the alleyway. The informant's tip contained many
23 indicia of reliability, as the informant provided his identity and contact information, he personally
24 observed the incident through a live video camera stream at the time he reported the information

25
26 ⁴ The evidence establishes that Defendant was ultimately arrested following this initial
27 seizure by the officers for violation of his parole. However, until that point, he was stopped for an
28 investigatory stop and neither party submits that he was arrested at the time of this interaction.
Therefore, the seizure of his person need only be supported by reasonable suspicion to pass muster
under the Fourth Amendment.

1 to the police, he had prior experience with the group he observed where they had thrown rocks at
2 him, and he provided detailed information about the group in terms of their specific location, as
3 well as some general information about their physical appearance.⁵ The informant also provided
4 details about the suspected criminal activity, that the men he observed were pulling on car handles
5 and potentially attempting to break into the cars in the alleyway.

6 Officer Moreno-Marquez, at the time of the incident, had at least five years of experience
7 working for LVMPD doing patrol and field training for the Downtown Command Unit. This
8 included special training in policies and procedures, criminal law, and a period of partnered field
9 training. He also had personal experience working as an officer in the neighborhood the informant
10 described and in responding to incidents at the specific location reported. Based on this
11 experience, he knew the area to be generally considered high crime and one where criminal street
12 gangs sometimes operated. Officer Moreno-Marquez observed Defendant running quickly away
13 from the subject location and slowing his pace rapidly upon noticing the LVMPD patrol car on
14 Stewart Avenue.

15 Considering the totality of the circumstances, the Court finds that it was reasonable to
16 conclude that a possible auto burglary was in progress and that Defendant, an adult Black male,
17 might have been involved in it and was fleeing the scene. This conclusion is sufficiently
18 particularized and reasonable to establish that reasonable suspicion existed to briefly seize
19 Defendant for an investigative stop. Since the Court finds that the investigative stop was supported
20 by reasonable suspicion, the Court further finds that it was not conducted in violation of the Fourth
21 Amendment. Given that there is no underlying constitutional violation, suppression of any
22 evidence is not warranted under the fruit of the poisonous tree doctrine.

23

24 ⁵ The Court is not swayed in its reasonable suspicion analysis by the evidence adduced at
25 the evidentiary hearing that, upon Officer Morey's review of the video the informant watched, he
26 determined that an auto burglary was not occurring. Reasonable suspicion is assessed based on
27 the totality of the circumstances and information available when the police action being challenged
28 occurred. *See Terry*, 392 U.S. at 21-22. Further, the purpose of the investigatory stop is to
investigate potential criminal activity. The Supreme Court has recognized that the standards
governing investigative stops "accept the risk that officers may stop innocent people" in favor of
allowing brief investigations. *Wardlow*, 528 U.S. at 125-26.

III. RECOMMENDATION

Based on the foregoing and good cause appearing therefore, **IT IS RECOMMENDED** that Defendant's motion to suppress, Docket No. 46, be **DENIED**.

IT IS SO ORDERED.

DATED: August 15, 2022.

NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE

NOTICE

This report and recommendation is submitted to the United States District Judge assigned to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation must file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).